

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL ORDER NO. _____

ADMINISTRATIVE CIVIL LIABILITY ORDER
IN THE MATTER OF

VIRGINIA L. DRAKE, TRUSTEE
DRAKE REVOCABLE TRUST

HUMBOLDT ROAD BURN DUMP AREA 7
ASSESSORS PARCEL NUMBER 011-780-018
BUTTE COUNTY

This order for Administrative Civil Liability (hereafter Order) is issued to Virginia L. Drake, Trustee, Drake Revocable Trust (hereafter referred to as Discharger) based on violations of Cleanup and Abatement Order No. R5-2003-0707 and provisions of California Water Code (CWC) Section 13350 and Section 13268(a) and (b), which authorize the imposition of Administrative Civil Liability.

The California Regional Water Quality Control Board, Central Valley Region, (Regional Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Humboldt Road Burn Dump (HRBD) is a contiguous collection of parcels containing, in whole or in part, waste from the disposal of municipal and/or commercial operations that contains waste as defined in California Water Code (CWC) section 13050 and hazardous materials as defined in Health and Safety Code section 25260(d). Studies of the HRBD, conducted under contract to the City of Chico, characterized the waste, delineated the extent, and confirmed the need for further remediation on several properties. Studies show that the HRBD has waste containing lead exceeding hazardous waste levels in some locations and other significant hazardous and non-hazardous waste constituents that pose a threat to human health and the environment, including waters of the state.

Assessors Parcel Number 011-780-018

2. Currently, Assessors Parcel Number (APN) 011-780-018 is 7.13 acres of essentially unimproved property near the intersection of Stilson Canyon and Humboldt Roads, in Chico, California. In the past, the property was part of a larger unimproved property; specifically, APN 011-780-018 was part of APN 011-780-010, and before that was part of the 98.5-acre parcel APN 011-050-116. APN 011-780-018 is also referred to as Area 7 of the HRBD.
3. A battery recycling facility is suspected of having operated on APN 011-780-018 in the past. Historic aerial photographs taken of the suspected battery recycling facility indicate that from 1937 until 1962, small structures were visible that are consistent with that type of operation. No structures are visible in Area 7 in photographs taken in 1975.
4. On 23 March 2000, soil samples were collected from Area 7, and the analyses showed the presence of lead at concentrations ranging from 27.9 mg/Kg to 8,340 mg/Kg, and pH ranging

from 6.05 to 6.88 Units. These constituents constitute waste as defined in CWC section 13050. The Discharger estimates that the volume of waste in Area 7 is approximately 500 cubic yards.

5. APN 011-780-018 is currently owned by Virginia L. Drake, the Drake Revocable Trust, James E. Simmons, Darwin H. Simmons, Nina R. Simmons, and the Simmons Family Trust. APN 011-780-018 was formerly also owned by John D. Drake. On 21 February 2001, John D. Drake deeded his ½ interest in the property to himself and Virginia L. Drake as trustees of the Drake Revocable Trust created on 23 January 2001. John D. Drake died on 22 November 2001. The Discharger, through the Drake Revocable Trust established with her deceased husband, John D. Drake, owns an undivided ½ interest, James E. Simmons owns an undivided ¼ interest, and Darwin H. Simmons and Nina R. Simmons, through the Simmons Family Trust, own an undivided ¼ interest in APN 011-780-018. The Discharger owns the property and has knowledge of the waste discharge. The City of Chico never owned the property subject to this Order.
6. On 3 March 2003, the Discharger filed civil action in Butte County Superior Court (Case #129127) against James Edward Simmons and Jean Simmons, and Darwin Harold Simmons and Nina Rae Simmons, as co-trustees of the Simmons Family Trust (hereafter the Simmons) to partition APN 011-780-018 and other properties the Discharger owns with the Simmons. Court action on the case is pending. Currently, a trial date for the partition action is set for 13 February 2006.

Previous Enforcement

7. In October 1997, the City of Chico, a responsible party as defined in Health and Safety Code Section 25260(h), requested the California Environmental Protection Agency Site Designation Committee designate an administering agency to oversee site investigation and remedial action at the HRBD¹. On 11 December 1997, the Site Designation Committee adopted Resolution No. 97-16 designating the Regional Board as the administering agency. Discharger's Area 8 is one of 13 parcels (with several owners) included in Resolution No. 97-16. Area 7 is not part of that site designation action.
8. On 3 June 2003, the Regional Board Executive Officer issued Cleanup and Abatement Order No. R5-2003-0707 (hereafter the 2003 CAO), pursuant to California Water Code section 13304, to the reasonably identifiable parties responsible for the waste at the HRBD. The 2003 CAO defines HRBD by listing 15 parcels owned by various parties including the parcel designated Area 7 subject to this Order.
9. The 2003 CAO requires the named dischargers to investigate, cleanup, and abate the effects of waste resulting from activities at the HRBD beginning 1 June 2004. The 2003 CAO does not specify a single responsible party to cleanup the fifteen parcels, but requests each individual

¹ Health and Safety Code section 25260 et seq. authorize a responsible party to request a committee, made of representatives of five Cal/EPA agencies and the Department of Fish and Game, - the Site Designation Committee - to designate an administering agency that would then have the sole jurisdiction over the investigation and remediation of the site, including enforcement actions. The administering is required to assure that all applicable state and local laws that apply to investigation and cleanup are complied with. At the completion of the cleanup, the responsible parties are given a certificate of completion that shields the site from further enforcement actions.

named in the 2003 CAO to submit written notification describing if they wish to maintain the City of Chico as lead responsible party and allow access to their respective properties for the purposes of investigation and cleanup or whether they intend to cleanup their own parcels. The 2003 CAO required the responsible parties to submit a remedial action plan (RAP) with a time schedule for completion of the cleanup. Upon approval of the RAP and time schedule, the RAP and time schedule became an enforceable part of the 2003 CAO.

10. The City of Chico based upon its application to the Site Designation Committee under Health and Safety Code section 25260 et. seq., had originally intended to cleanup all 15 parcels listed in the 2003 CAO and place the waste in one HRBD onsite location, but due to various factors ultimately decided to cleanup only certain parcels. The City offered to include waste from other parcels in their RAP, but made clear that participation in the City's cleanup was contingent upon negotiation of cost-sharing arrangements with all other responsible parties, determination of whether insurance coverage is available, indemnification of the City by private property owners, and agreement that the City would contribute to the cost of cleanup of private properties only to the extent that the City was found to have some responsibility.

Remediation of HRBD Properties

11. Since issuance of the 2003 CAO, ownership changed on several properties comprising HRBD. In addition, and in response to the City's action, the Thomas and Mary Fogarty Revocable Trust took responsibility to remediate their parcels, and parcels currently owned by Borge Development. The City took responsibility to remediate the Chico Redevelopment Agency parcels. The New Urban Builders took responsibility to remediate its parcel.
12. On 14 July 2004, to comply with the 2003 CAO, Thomas and Mary Fogarty Revocable Trust began cleanup of two HRBD properties (APN 011-030-138 and 011-030-139). On 10 March 2005, the Executive Officer issued Thomas and Mary Fogarty Revocable Trust a Certificate of Completion, pursuant to HSC section 25260, et seq., for the hazardous materials release site on one of their parcels. On 31 May 2005, Thomas and Mary Fogarty Revocable Trust and Borge Development continued with cleanup activities of five additional HRBD properties. On 10 August 2005, excavation and removal of HRBD waste from these five parcels was completed. The waste was placed in a consolidation cell, which is regulated pursuant to waste discharge requirements issued by the Regional Board.
13. On 1 June 2005, to comply with the 2003 CAO, Chico Redevelopment Agency began cleanup of six HRBD properties under their control. On 12 August 2005, excavation and removal of HRBD waste from these six parcels was completed. The waste was placed in a consolidation cell, which is regulated pursuant to waste discharge requirements issued by the Regional Board.
14. On 25 July 2005, to comply with the 2003 CAO, New Urban Builders began cleanup of their HRBD property. On 2 August 2005, excavation and removal of HRBD waste from this parcel was completed. The waste was disposed at Norcal Systems, Ostrom Road Class II Landfill, which is regulated pursuant to waste discharge requirements issued by the Regional Board.
15. As of 12 August 2005 all parcels at the HRBD have been cleaned up, as described in Findings 11 through 14, except the parcels owned by the Discharger and the Simmons. The Chico

Redevelopment Agency cleaned up 6 of the 15 parcels, the Thomas and Mary Fogarty Revocable Trust cleaned up 6 of the 15 parcels, and New Urban Builders cleaned up 1 of the 15 parcels. In all, approximately 260,000 cubic yards of HRBD waste was excavated and placed in permitted disposal cells by the 2003 CAO deadline of 15 August 2005.

HRBD Area 7

16. On 13 February 2004, the Discharger submitted to Regional Board staff a Notice of Intent to submit a separate Remedial Action Plan for Area 7 to comply with the 2003 CAO, rather than relying on the City of Chico. On 15 March 2004, the Discharger submitted a status report committing to clean up the Area 7 waste. Subsequently, the Discharger notified Regional Board and City of Chico staffs of its intent to remove the Area 7 waste by summer 2004, if possible.
17. On 8 July 2004, the Discharger joined with other private parties to submit a Final Remedial Action Plan (RAP) for Humboldt Road Private Properties Operational Unit that included Area 7 and seven other properties. The remedial alternative proposed for Area 7 was excavation and off-site disposal. The RAP proposed a time schedule to submit initial engineering design plan documents by 11 June 2004. The Regional Board approved the RAP and time schedule on 8 July 2004. Upon approval of the RAP by the Executive Officer, the time schedule became an enforceable part of the 2003 CAO. On 13 July 2004, Regional Board staff requested the Discharger submit a Remedial Design and Implementation Plan (RDIP) on or before 13 August 2004. On 28 July 2004, the Discharger notified Regional Board staff that it intended to immediately develop and submit an RDIP and seek permits from other agencies to allow remediation work to begin in Spring 2005.
18. On 10 September 2004, the Discharger notified the Simmons of its intent to manage and obtain all necessary permits to cleanup the Area 7 waste during Summer 2005. The Discharger proposed to allocate clean up costs based on the percentage of property ownership and committed to keep the total overall cleanup costs to a minimum. The Simmons indicated in writing they would pay the Discharger their fair share of the cleanup costs.
19. On 17 February 2005, the Discharger denied the Chico Redevelopment Agency's request to execute an Agreement for Right of Entry to place, operate or maintain air-monitoring equipment on Areas 7 and 8 during the Agency's remediation of six HRBD properties. The denial, in the form of a letter, indicated that the Discharger did not want anything interfering with its Summer 2005 cleanup of Areas 7 and 8.
20. On 10 March 2005, the Discharger submitted an incomplete RDIP containing three cleanup alternatives for the Area 7 and Area 8 waste. The Discharger selected Alternative 3, the trucking of the 500 cubic yards of Area 7 waste and 7,500 cubic yards of Area 8 waste to a Class 1 landfill, approximately 300 miles from the site, at an estimated total cost of \$1,400,000. Alternative 1 and 2, not selected by the Discharger, involved disposal of the waste at designated disposal sites at HRBD at an estimated cost of \$200,000.²

² The estimated total costs for remediation include both Area 7 and Area 8. The portion of the estimated remediation costs attributed to Area 7 are; \$87,500 to transport the waste to a Class 1 landfill and \$12,500 to consolidate the waste at the HRBD. The portion of the estimated remediation costs attributed to Area 8 are; \$1,312,500 to transport the waste to a Class 1 landfill and \$187,500 to consolidate the waste at the HRBD.

21. On 11 April 2005, the Simmons notified the Discharger that they agreed with the plan to clean up the waste at the lower estimated total cost of \$200,000 (either Alternative 1 or 2). The Discharger did not object to the Simmons cleaning up the Area 7 and 8 at the Simmons' expense. However, on 15 April 2005, the Discharger submitted to Regional Board staff a notice that it will require the Simmons and other parties to comply with unspecified conditions prior to the cleanup. The Discharger made clear to Regional Board staff that it had assumed responsibility for cleanup of Area 7, was so authorized by the Simmons as co-owners to complete the cleanup, was in control of the cleanup activities as indicated by contact with permitting agencies, and had the financial ability to complete cleanup activities, in part through an agreement with the Simmons.
22. The Chico Redevelopment Agency consolidation cell was not filled to design capacity with waste from the Redevelopment Agency parcels. The Chico Redevelopment Agency consolidation cell had sufficient capacity for the Area 7 and 8 waste. The Redevelopment Agency had offered the Discharger the opportunity to place the waste from Area 7 and 8 into the cell during the 2005 construction season. The Discharger, however, had failed to complete application or secure regulatory permits and agreements necessary for cleanup of Area 7 waste and had indicated its intent not to select HRBD as a disposal site. As late as 1 August 2005, there was sufficient capacity in the Chico Redevelopment Agency consolidation cell to accept all waste from Areas 7 and 8 as 14,000 cubic yards of "clean fill" were required to achieve final design grade.
23. The City of Chico and Chico Redevelopment Agency do not own or have control over Area 7, and therefore could not remediate the site without permission of the Discharger. The Discharger, in fact, denied Chico Redevelopment Agency access to both Area 7 and Area 8 for placement of air monitoring equipment required by the Butte County Air Quality management District. The City of Chico, Chico Redevelopment Agency, Thomas and Mary Fogarty Revocable Trust, Borge Development, and New Urban Builders were not, and are not considered responsible parties for Area 7 waste with respect to the 2003 CAO.

Discharger Violations

Failure to Obtain Regulatory Permits

24. The 2003 CAO includes Required Action 17, which requires the Discharger obtain all local and state permits and access agreements to fulfill the requirements of the 2003 CAO prior to beginning the work. On 28 July 2004, the Discharger notified Regional Board staff of its intent to secure regulatory permits necessary to cleanup the Area 7 waste.
25. On 21 December 2004, the Discharger submitted an incomplete application for Authority to Construct with Butte County Air Quality Management District (BCAQMD). The Discharger did not complete the application. Subsequently, the Discharger notified BCAQMD staff to halt the project.
26. On 28 March 2005, Regional Board staff reminded the Discharger that the 2003 CAO requires cleanup to begin 1 June 2004, provided a list of regulatory permits required for cleanup to begin, and requested the Discharger submit copies of each complete permit application by 1 May 2005.

27. On 15 April 2005, the Regional Board Executive Officer required the Discharger and the Simmons submit, pursuant to CWC section 13267, a technical report and time schedule, by 20 April 2005, describing each regulatory agency permit or authorization necessary for work to begin on Area 7, the date they intend to apply for each permit or authorization, and the date they anticipated receiving the permit or authorization.
28. In response, the Discharger indicated that consultants were obtained to initiate two regulatory permits; however, the Discharger subsequently notified these consultants to halt the project. The Discharger failed to submit the technical report by 20 April 2005 and copies of each complete permit application by 1 May 2005.

Failure to Implement Cleanup

29. The 2003 CAO includes Required Action 7, which requires the Discharger to submit, by 1 April 2004, 100 percent design plans and specifications for implementation of the Remedial Action Plan (RAP). Following the Regional Board Executive Officer's approval of the Discharger's RAP, on 13 July 2004, Regional Board staff requested the Discharger submit design plans and specifications (RDIP) on or before 13 August 2004, for implementing the Area 7 cleanup.
30. On 28 March 2005, to complete the RDIP, Regional Board staff requested the Discharger submit a revised Confirmation Sampling Plan and Transportation Plan. The Discharger submitted the revised Confirmation Sampling Plan but failed to submit the revised Transportation Plan by 1 May 2005. Therefore, the Discharger failed to complete the RDIP.
31. The 2003 CAO includes Required Action 3, which requires the Discharger to begin cleanup no later than 1 June 2004. The 28 March 2005 letter provided the Discharger final notice of Regional Board staff's intent to request the Regional Board Executive Officer pursue additional enforcement action if final cleanup of Area 7 waste is not completed by 15 August 2005. Wastes in Area 7 have yet to be remediated.
32. On 19 April 2005, the Regional Board Executive Officer required the Discharger and the Simmons to submit, by 1 May 2005, a technical report pursuant to CWC section 13267, describing the selected off-site disposal alternative for the Area 7 waste and the revised transportation plan developed pursuant to the selected alternative. The Simmons responded, in writing, that since the Discharger indicated full control of the proposed cleanup project, they did not need to submit the technical report. The Discharger failed to submit the required technical report.

Failure to Comply with other Required Actions

33. The 2003 CAO includes Required Action 9, which requires the Discharger to submit, on the 15th of each month, a status report to describe progress in complying with the 2003 CAO, explain any problems with compliance or delays in the schedule, and provide and plan for returning the cleanup to compliance with the 2003 CAO. The Discharger submitted a limited number of monthly status (technical) reports from 15 March 2004 through 15 April 2005. The Discharger has failed to submit the May 2005 report (due 15 June 2005), the June 2005 report

(due 15 July 2005), the July 2005 report (due 15 August 2005), and the August 2005 report (due 15 September 2005).

34. The 2003 CAO includes Required Action 11, which requires any individual seeking to clean their parcel outside of an agreement with the City of Chico to act as their overall Responsible Party, to reimburse the Regional Board for reasonable costs associated with oversight of the cleanup of that parcel. On 16 March 2005, the State Water Resources Control Board (SWRCB) SLIC Program received \$353.15 from the Discharger to reimburse Regional Board staff oversight costs for the 1 July through 30 September 2004 billing period (Invoice Number 40813). On 23 June 2005, the SWRCB SLIC Program received \$381.21 from the Discharger to reimburse Regional Board staff oversight costs for the 1 October through 31 December 2004 billing period. On 23 July 2005, the Discharger failed to submit a \$3,415.22 payment (Invoice Number 42726) to reimburse Regional Board staff oversight costs for the 1 January through 31 March 2005 billing period. From 1 April through 23 September 2005, Regional Board staff has worked an additional 146 hours overseeing the Discharger's cleanup. SWRCB SLIC program staff will be issuing an invoice requesting the Discharger submit payment for this work.

REGULATORY CONSIDERATIONS

35. Cleanup and Abatement Order (CAO) No. R5-2003-0707 states:
"If the Dischargers violate this Order, the dischargers may be liable civilly in a monetary amount provided by the California Water Code."
36. On 28 July 2004, in violation of the 2003 CAO, the Discharger failed to apply for the necessary permits to remove the Area 7 waste. Although the Discharger notified Regional Board staff and the Simmons of its intent to secure regulatory permits necessary to cleanup the Area 7 waste, the Discharger failed to submit complete timely applications to appropriate regulatory agencies or secure necessary permits so cleanup work could be completed by 15 August 2005.
37. On 15 August 2005, in violation of the 2003 CAO, the Discharger failed to remove waste from Area 7.
38. On 23 July 2005, in violation of the 2003 CAO, the Discharger failed to submit payment for Invoice Number 42726 to reimburse the Regional Board for reasonable costs associated with staff oversight of the Area 7 cleanup.
39. CWC Section 13304(a) states:
"Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharge where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up such waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and

abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant."

40. CWC Section 13304(c)(1) states:

"If the waste is cleaned up or the effect of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial actions. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the state board to the extent of the latter's contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds."

41. CWC Section 13350 states, in part:

"(a) Any person who (1) violates any ... cleanup and abatement order hereafter issued, reissued, or amended by a regional board ... shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the discharge occurs.

(f) A regional board may not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327."

42. The Discharger has violated a cleanup and abatement order and, therefore, is subject to civil liability pursuant to Water Code section 13350(a)(1) and (e)((1)(B). Since 28 July 2004, the Discharger has failed to obtain the necessary regulatory permits and initiate Area 7 waste cleanup and; therefore, as of 23 September 2005, the Discharger has been in violation of the

2003 CAO for 422 days. Since 15 August 2005, the Discharger has failed to remove waste from Area 7 and; therefore, as of 23 September 2005, the Discharger has been in violation of the 2003 CAO for 39 days. Since 23 July 2005, the Discharger has failed to submit payment to reimburse Regional Board staff oversight costs for the 1 January through 31 March 2005 billing period (Invoice Number 42726), and; therefore, as of 23 September 2005 the Discharger has been in violation of the 2003 CAO for 62 days. The maximum liability that can be imposed by the Regional Board under CWC Section 13350 is \$5,000 for each day and the minimum liability than can be imposed is \$100 for each day. Therefore, the maximum administrative liability is \$2,615,000 ((422 + 39 + 62) days times \$5,000 per day) and the minimum liability is \$52,300 (422 + 39 + 62 days times \$100 per day).

43. Since 15 June 2005, in violation of CWC Section 13267 and the 2003 CAO, the Discharger has failed to submit the May 2005 monthly technical report. Since 15 July 2005, in violation of CWC Section 13267 and the 2003 CAO, the Discharger has failed to submit the June 2005 monthly technical report. Since 15 August 2005, in violation of CWC Section 13267 and the 2003 CAO, the Discharger has failed to submit the July 2005 monthly technical report. Since 15 September 2005, in violation of CWC Section 13267 and the 2003 CAO, the Discharger has failed to submit the August 2005 monthly technical report for the Area 7 waste.
44. Since 20 April 2005, in violation of CWC section 13267 and the 2003 CAO, the Discharger has failed to submit a technical report regarding regulatory permitting for the Area 7 waste.
45. Since 1 May 2005, in violation of CWC section 13267 and the 2003 CAO, the Discharger has failed to submit an off-site disposal alternative/revised transportation plan technical report for the Area 7 waste.
46. CWC Section 13268 states:

“Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 of a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.”

47. The Discharger is subject to civil liability pursuant to Water Code section 13268(b) for failing to submit technical or monitoring reports required pursuant to Water Code section 13267. Since 15 June 2005, in violation of the 2003 CAO, the Discharger has failed to submit the May 2005 monthly technical report for the Area 7 waste and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC Section 13267 for 100 days. Since 15 July 2005, in violation of the 2003 CAO, the Discharger has failed to submit the June 2005 monthly technical report for the Area 7 waste and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC Section 13267 for 70 days. Since 15 August 2005, in violation of the

2003 CAO, the Discharger has failed to submit the July 2005 monthly technical report for the Area 7 waste and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC Section 13267 for 39 days. Since 15 September 2005, in violation of the 2003 CAO, the Discharger has failed to submit the August 2005 monthly technical report for the Area 7 waste and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC Section 13267 for 8 days. Since 20 April 2005, the Discharger has failed to submit a regulatory permitting technical report for the Area 7 waste and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC Section 13267 for 156 days. Since 1 May 2005, the Discharger has failed to submit an off-site disposal alternative/revised transportation plan technical report for the Area 7 waste and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC Section 13267 for 145 days. The maximum liability that can be imposed by the Regional Board under CWC Section 13268 is \$1,000 for each day. Therefore, the maximum administrative civil liability is \$518,000 (100 + 70 + 39 + 8 + 156 + 145 days times \$1,000 per day).

48. As described in Findings 42 and 47, the maximum administrative civil liability allowed pursuant to CWC Section 13350 and 13268 is \$3,133,000 (\$2,615,000 + \$518,000). The minimum administrative liability allowed pursuant to CWC Section 13350 is \$52,300. CWC Section 13268 does not provide for a minimum liability.
49. On 23 September 2003, the Regional Board Executive Officer issued \$100,000 Administrative Civil Liability (ACL) Complaint No. R5-2005-0524 in the amount of \$100,000 to the Discharger for violations of the 2003 CAO, including failure to obtain regulatory permits necessary for cleanup of Area 7 waste, to remove waste from Area 7, submit payment for Invoice Number 42726, to submit monthly technical reports, submit a regulatory permitting technical report, and to submit an off-site disposal alternative/revised transportation plan technical report. ACL Complaint No. R5-2005-0524 was not paid or settled.
50. As of the date of this Order, the Discharger has failed to obtain regulatory permits necessary for cleanup of Area 7 waste, remove waste from Area 7, submit payment for Invoice Number 42726, submit monthly technical reports, submit a regulatory permitting technical report, and submit an off-site disposal alternative/revised transportation plan technical report. The off-site disposal alternative/revised transportation plan technical report, a part of the RDIP, and several regulatory agency permits must be issued for cleanup of the Area 7 waste to occur during Summer 2006. The monthly technical reports must be submitted to determine compliance with the 2003 CAO. Payment must be submitted for Invoice Number 42726 and subsequent invoices issued for Area 7.
51. CWC Section 13327 states:
"In determining the amount of civil liability, the regional board ... shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require."

52. The Regional Board has considered the following with respect to the factors in CWC Section 13327:

The nature of the violations is that the Discharger failed to obtain permits necessary to proceed with cleanup in compliance with the 2003 CAO, failed to cleanup the waste in compliance with the 2003 CAO, failed to pay oversight costs in compliance with invoices from the State Water Resources Control Board and as required by the 2003 CAO, failed to submit technical reports as required by the 2003 CAO and Water Code section 13267 Orders, and failed to complete technical documents necessary to assure compliance with mitigation measures in the California Environmental Quality Act Environmental Impact Report with respect to transportation of waste. The specific violations are described in Findings 36 through 38, 42 through 45.

The circumstances are that the Discharger did not contest (petition or otherwise challenge) issuance of the 2003 CAO or CWC section 13267 Technical Report Orders and was aware of the required dates to submit permits, remove Area 7 waste, submit payment for State Water Resources Control Board SLIC Program Invoice Number 42726, submit monthly technical reports for the Area 7 waste, submit a regulatory permitting technical report for the Area 7 waste, and submit an off-site disposal alternative/revised transportation plan technical report for the Area 7 waste.

The extent of the violations for Area 7 wastes are that, as of 23 September 2005, complete applications for the required regulatory permits to remove waste have not been submitted; the waste has not been removed; payment has not been submitted for State Water Resources Control Board SLIC Program Invoice Number 42726; the May, June, July, and August 2005 monthly technical report have not been submitted; a regulatory permitting technical report has not been submitted; and an off-site disposal alternative/revised transportation report has not been submitted.

The gravity of the violations is that the waste was not cleaned up in a timely manner, that it continues to pose a threat to the environment and public health, and that staff and other public resources are wasted on continued efforts to obtain compliance.

In particular, the Discharger failed to submit complete applications to allow regulatory agencies time to issue the required regulatory permits to remove the Area 7 waste during summer 2005, while other HRBD wastes were undergoing cleanup and while there was sufficient capacity in two adjacent and permitted disposal cells to accept Area 7 waste. The Discharger's failure to obtain the required permits has increased the disposal costs for the Area 7 waste, which may need to be transported 300 miles away (Alternative 3) instead of on adjacent parcels (Alternatives 1 or 2).

The Discharger failed to remove the Area 7 waste as required before 15 August 2005. Waste removal activities are not permitted while Hank Marsh Junior High School is in session (August 16 to May 26) and, therefore, will not be able to be removed until next summer. The waste will continue to pose a threat to human health and the environment, including waters of the state for nearly another year. Rain and wind may result in erosion and dispersion of the waste, including lead, from Area 7. Although the Area 7 waste is fenced and posted, it also creates a condition of nuisance (e.g., to trespassers).

The Discharger failed to submit payment for oversight costs. The Discharger's failure to submit such payment undermines the State Water Resources Control Program Cost Recovery Program, and is a priority violation as defined in the State Water Resources Control Board Water Quality Enforcement Policy.

The Discharger's failure to submit monthly technical reports has resulted in no communication between the Discharger and Regional Board staff. Without communication, Regional Board staff is unable to assist the Discharger in maintaining compliance with the 2003 CAO or to assure protection of human health and the environment.

At the request of Regional Board staff, state and local regulatory permitting agencies were prepared to expeditiously process the Discharger's permit applications so cleanup of the Area 7 waste could occur in Summer 2005. The Discharger's failure to comply with orders to seek required permits is a priority violation, as defined in the State Water Resources Control Board Water Quality Enforcement Policy.

The Discharger's failure to complete the transportation plan prevented the Regional Board staff from assessing the impact of the cleanup alternative on other cleanups occurring at the HRBD and to address community concerns about potential traffic issues in the area. The Discharger's failure to comply with orders to submit an adequate traffic plan is a priority violation, as defined in the State Water Resources Control Board Water Quality Enforcement Policy.

With respect to the Discharger, it has not been demonstrated that there is an inability to pay or to continue in business. The Discharger was notified of the opportunity to provide such information when the ACL Complaint was issued and has not submitted information to date.

With respect to voluntary cleanup efforts, the Discharger has not undertaken voluntary cleanup efforts, hence the issuance of the 2003 CAO and the ACL complaint.

With respect to degree of culpability, the Discharger has made clear to Regional Board staff that the Discharger has assumed responsibility to cleanup the parcel to the exclusion of other responsible parties, was authorized by Simmons as part owners of the parcel to clean up the parcels, was in control of the cleanup activities as indicated by contact with permitting agencies, and has the financial ability, in part through an agreement with the Simmons, to clean up the Area 7 waste. The Discharger was aware of the requirements and chose not to comply. Submitting the required permit applications and technical reports should have taken minimal effort. The Discharger is, therefore, fully culpable for the violations.

With respect to economic savings, the Discharger has benefited by delaying the expenditure of funds necessary to complete the required regulatory permit applications, cleanup the Area 7 waste, submit payment for oversight costs, and complete the required technical reports. At a minimum, based on a rate of 5% per annum, the Discharger has benefited by \$4,837 in interest savings by failing to submit five complete regulatory permit applications and complete the Area 7 waste cleanup by 15 August 2005. The Discharger has benefited, a minimum of \$6,000, by failing to submit the four monthly technical reports, a regulatory permitting report, and an off-site disposal alternative/revised transportation report. In addition, the Discharger has benefited \$3,412.22 by failing to submit payment for Invoice Number 42726. The Discharger's total minimum economic savings is \$14,352.22. Further, the Discharger's failure has resulted in significantly increasing cleanup costs for the Area 7 waste from \$12,500 (Alternative 1 or 2) to \$87,500 (Alternative 3).

The Discharger is only a 50 percent owner of Areas 7 and 8, but clearly exhibited apparent control of activities on the parcels. For example, approval was given by the minority property owners to allow the Chico Redevelopment Agency to place air monitoring equipment (required by the BCAQMD) on Areas 7 and 8. However, the Discharger, obviously in control of access to Areas 7 and 8, denied "right of entry" and demanded that THE air-monitoring equipment be removed and placed on property not under the Discharger's control. The discharger exhibited similar control over cleanup activities related to compliance with the 2003 CAO. The Discharger's sudden cessation of compliance activities at a "point-in-time", clearly precluded other property owners from proceeding with cleanup during the 2005 construction season. In addition, Regional Board staff expended approximately 75 hours, or \$6,000 in staff costs in generation of the original Area 7 ACL complaint and preparation of the agenda material for the Regional Board presentation. The hours have been reported to the State Water Resources Control Board SLIC Program database for future invoicing to the Discharger.

The Discharger does not have a history of previous violations.

53. Administrative Civil Liability in the amount of \$100,000 is appropriate based upon the Findings in this Order, including 42 through 45, 47, 48, and consideration of the factors in Finding 52.
54. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321(a)(2), Title 14, of the California Code of Regulations.
55. Any person affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with Section 2050 through 2068, Title 23, California Code of Regulations. The petition must be received by the State Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions are available at http://www.waterboards.ca.gov/wqpetitions/wqpetition_instr.html and will be provided upon request.

ACL ORDER NO. _____
HUMBOLDT ROAD BURN DUMP AREA 7
BUTTE COUNTY

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IT IS HEREBY ORDERED that the Regional Water Quality Control Board, Central Valley Region, imposes upon Virginia L. Drake, Trustee, Drake Revocable Trust, administrative civil liability in the amount of \$100,000 in accordance with California Water Code Section 13350 and Section 13268. Payment shall be made within 30 days of the date of this Order, and shall be in the form of a certified check made payable to the *State Water Resources Control Board Cleanup and Abatement Account*. The check shall have written upon it the number of this Order.

I, THOMAS R. PINKOS, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on _____.

THOMAS R. PINKOS, Executive Officer

(Date)

KLC: sae
11/7/05